

The Honorable Kymberly K. Evanson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DEBRA S. O'NEAL,

Plaintiff,

v.

STATE FARM FIRE AND CASUALTY
COMPANY,

Defendant.

No. 2:23-cv-00232-KKE

**STIPULATED PROTECTIVE
ORDER**

This matter comes before the Court on the parties' stipulated protective order. The Court GRANTS the stipulated protective order subject to the Court's revisions to paragraphs 4.3, 5.1, and 9.1.

I. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, Plaintiff Debra S. O'Neal ("O'Neal") and Defendant State Farm Fire and Casualty Company ("State Farm") (collectively, the "Parties") hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The Parties acknowledge that this agreement is consistent with LCR 26(c), and hereby certify

STIPULATED PROTECTIVE ORDER- 1
NO. 2:23-cv-00232-KKE

1 that the Parties have engaged in good-faith meet and confer conferences in an effort to resolve the
 2 dispute without court action, as follows:

- 3 1. October 23, 2023, via telephone conference, attended by James D. Hicks,
 4 Christopher Furman, and Dubs Herschlip.
- 5 2. February 9, 2024, via telephone conference, attended by Christopher Furman and
 6 Dubs Herschlip.
- 7 3. February 28, 2024, via telephone conference, attended by Christopher Furman and
 8 Rafael Bultz.
- 9 4. February 29, 2024, via telephone conference, attended by Christopher Furman and
 Rafael Bultz.

10 The Stipulated Protective Order does not confer blanket protection on all disclosures or
 11 responses to discovery, the protection it affords from public disclosure and use extends only to the
 12 limited information or items that are entitled to confidential treatment under the applicable legal
 13 principles, and it does not presumptively entitle either Party to file confidential information under
 14 seal.
 15

16 **II. CONFIDENTIAL MATERIAL**

17 “Confidential” material shall include the following documents and tangible things produced
 18 or otherwise exchanged in discovery:

19 **1)** Claims training and procedure manuals, other similar materials that contain or
 20 consist of trade secrets, confidential, internal-use only, proprietary research and
 21 development, or other commercial information relating to first-party property
 22 coverage and/or claims, including but not limited to the following specific documents
 (and various revisions):

- 23 • 70-29; OG; RECISSION AND VOIDANCE;
- 24 • 70-103; OG; CREDIT REPORTS;
- 25 • 74-10; OG; SIU – NICB, ISO, AND REPORTING SUSPECTED FRAUD;
- 26 • 74-20; OG; COVERAGE QUESTION PROCEDURES;
- 74-21; OG; STATEMENTS;
- 75-05; OG; PERSONAL PROPERTY CLAIM HANDLING;

- 75-06; OG; DOCUMENTATION OF PERSONAL PROPERTY LOSS;
- 75-07; OG; STRUCTURAL LOSS CLAIM HANDLING;
- 75-09; OG; APPRAISAL;
- 75-100; OG; CLAIM APPLICATIONS – FIRST PARTY;
- 75-25; OG; STOLEN IDENTITY CLAIMS WITH INDICATORS OF FRAUD;
- 75-50; OG; BETTERMENT, DEPRECIATION, AND ACTUAL CASH VALUE;
- 75-53; OG; DEDUCTIBLES;
- PREFACE;

2) Documents responsive to your request for Forrest Dawson's personnel file, including:

- Training records for Forrest Dawson contained in his State Farm personnel file (if any);
- Forrest Dawson's independent contractor agreement with State Farm;

The Parties reserve the right to seek by stipulation or motion to enlarge this list as discovery proceeds in the event that any Party seeks additional information not included in the above description which is entitled to protections and is otherwise discoverable under Rule 26 and the local rules.

III. SCOPE

3.1 The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by Parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise. Confidential material is not considered part of the public domain at trial or otherwise when Parties adhere to sections 4.2 and 4.3. All such information retains its confidential protections if use was pursuant to a Protective

1 Order, Confidentiality Agreement, Order of a Court, governmental subpoena, regulatory compliance
2 activity, or inadvertent disclosure that was subsequently remedied.

3
4 3.2 Nothing in this Agreement shall be construed to prohibit, restrict, or require State
5 Farm to obtain an authorization for the retention, use, or disclosure of nonpublic Confidential
6 Information and records as authorized or as reasonably required by its Information Retention
7 Schedules, federal or state law or regulation, or court order, rule; including but not limited to
8 reporting to or for: Medicare authorities if reporting is applicable; a third-party for analysis of records
9 in anti-fraud efforts (using non-fraudulent data to benchmark); rate-making or otherwise; and
10 retaining reports in paperless electronic claim systems for permissible insurance functions. Nothing
11 in this order shall prevent State Farm from retaining all documents necessary for regulatory
12 compliance activities, nor from producing any documents necessary for regulatory compliance
13 activities.
14

15 **IV. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

16 4.1 Basic Principles. Named Plaintiff Debra S. O'Neal may use confidential material that
17 is disclosed or produced by State Farm in connection with this case only for prosecuting, defending,
18 or attempting to settle this litigation.
19

20 Confidential material may be disclosed only to the categories of persons and under the
21 conditions described in this agreement. Confidential material must be stored and maintained by a
22 receiving Party at a location and in a secure manner that ensures that access is limited to the persons
23 authorized under this agreement.
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1 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
2 by the court or permitted in writing by the designating party, a receiving Party may disclose any
3 confidential material only to:

4 (a) The receiving Party’s counsel of record in this action, as well as employees
5 of counsel to whom it is reasonably necessary to disclose the information for this litigation;
6

7 (b) The officers, directors, and employees (including in-house counsel) of State
8 Farm to whom disclosure is reasonably necessary for this litigation;

9 (c) Experts and consultants to whom disclosure is reasonably necessary for this
10 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A).
11 The Parties agree to provide signed Acknowledgments from each expert with any expert disclosures
12 or at the time of testimony at deposition or trial, as applicable. *See* Fed. R. Civ. P. 26(a)(2);
13

14 (d) The court, including the court reporters and other court staff and personnel,
15 mediators, arbitrators, jury consultants, or factfinder(s) while in trial;

16 (e) Copy or imaging services retained by counsel to assist in the duplication of
17 confidential material, provided that counsel for the party retaining the copy or imaging service
18 instructs the service not to disclose any confidential material to third parties and to immediately
19 return all originals and copies of any confidential material;
20

21 (f) During their depositions, witnesses in the action to whom disclosure is
22 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
23 (Exhibit A), unless otherwise agreed by the designating Party or ordered by the court. Pages of
24 transcribed deposition testimony or exhibits to depositions that reveal confidential material must be
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1 separately bound by the court reporter and may not be disclosed to anyone except as permitted under
2 this agreement;

3 (g) The author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the information; and

5 (h) The Division of Insurance, law enforcement officers, and/or other
6 government agencies, as permitted or required by applicable state and federal law.

7
8 4.3 Filing Confidential Material. Before filing confidential material or discussing or
9 referencing such material in court filings, the filing party shall confer with the designating party in
10 accordance with LCR 5(g)(3)(A), to determine whether the designating party will remove the
11 confidential designation, whether the document can be redacted, or whether a motion to seal or
12 stipulation and proposed order is warranted. During the meet and confer process, the designating
13 Party must identify the basis for sealing the specific confidential information at issue, and the filing
14 party shall include this basis in its motion to seal, along with any objection to sealing the information
15 at issue. LCR 5(g) sets forth the procedures that must be followed and the standards that will be
16 applied when a Party seeks permission from the court to file material under seal. A Party who seeks
17 to maintain the confidentiality of its information must satisfy the requirement of LCR 5(g)(3)(B),
18 even if it is not the Party filing the motion to seal. Failure to satisfy this requirement will result in
19 the motion to seal being denied.

22 V. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party that
24 designates information or items for protection under this agreement must take care to limit any such
25 confidential designation to specific material that qualifies under the appropriate standards. The
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1 designating Party must designate for protection only those parts of material, documents, items, or
2 oral or written communications that qualify, so that other portions of the material, documents, items,
3 or communications for which protection is not warranted are not swept unjustifiably within the ambit
4 of this agreement.
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6 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
7 to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily
8 encumber or delay the case development process or to impose unnecessary expenses and burdens on
9 other Parties) may expose the designating Party to sanctions.
10

11 If it comes to a designating Party's attention that information or items that it designated for
12 protection do not qualify for protection, the designating Party must promptly notify all other Parties
13 that it is withdrawing the mistaken designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement
15 (*see, e.g.*, section 5.2(a) below), or as otherwise stipulated or ordered, disclosure or discovery
16 material that qualifies for protection under this agreement must be clearly so designated before or
17 when the material is disclosed or produced.
18

19 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
20 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
21 the designating Party must affix the word "CONFIDENTIAL – SUBJECT TO PROTECTIVE
22 ORDER" to each page that contains confidential material. If only a portion or portions of the material
23 on a page qualifies for protection, the producing Party also must clearly identify the protected
24 portion(s) (*e.g.*, by making appropriate markings in the margins).
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1 (b) Testimony given in deposition or in other pretrial proceedings: the
 2 designating Party must identify on the record, during the deposition or other pretrial proceeding, all
 3 protected testimony, without prejudice to their right to so designate other testimony after reviewing
 4 the transcript. Any Party may, within fifteen days after receiving the transcript of the deposition or
 5 other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If
 6 a Party desires to protect confidential information at trial, the issue should be addressed during the
 7 pre-trial conference.
 8

9 (c) Other tangible items: the producing Party must affix in a prominent place on
 10 the exterior of the container or containers in which the information or item is stored the word
 11 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.” If only a portion or portions of the
 12 information or item warrant protection, the producing Party, to the extent practicable, shall identify
 13 the protected portion(s).
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15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 16 designate qualified information or items does not, standing alone, waive the designating Party’s right
 17 to secure protection under this agreement for such material. Upon timely correction of a designation,
 18 the receiving Party must make reasonable efforts to ensure that the material is treated in accordance
 19 with the provisions of this agreement.
 20

21 VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party may challenge a designation of confidentiality at
 23 any time. Unless a prompt challenge to a designating Party’s confidentiality designation is necessary
 24 to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant
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1 disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality
2 designation by electing not to mount a challenge promptly after the original designation is disclosed.

3
4 6.2 Meet and Confer. The Parties must make every attempt to resolve any dispute
5 regarding confidential or non-waiver of privilege designations without court involvement. Any
6 motion regarding confidential or non-waiver of privilege designations or for a protective order must
7 include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in
8 a good faith meet and confer conference with other affected Parties in an effort to resolve the dispute
9 without court action. The certification must list the date, manner, and participants to the conference.
10 A good-faith effort to confer requires a face-to-face meeting or a telephone conference.

11
12 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
13 intervention, the designating Party may file and serve a motion to retain confidentiality or privilege
14 under LCR 7 (and in compliance with LCR 5(g), if applicable). The burden of persuasion in any
15 such motion shall be on the designating Party. Frivolous challenges, and those made for an improper
16 purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other Parties) may expose
17 the challenging Party to sanctions. All Parties shall continue to maintain the material in question as
18 confidential and/or privileged until the court rules on the challenge.
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20 **VII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
21 **OTHER LITIGATION**

22 7.1 If a Party is served with a subpoena or a court order issued in other litigation that
23 compels disclosure of any information or items designated in this action as “CONFIDENTIAL –
24 SUBJECT TO PROTECTIVE ORDER,” that Party must:

25 (a) Promptly notify the designating Party in writing and include a copy of the
26 subpoena or court order;

1 (b) Promptly notify in writing the Party who caused the subpoena or order to issue
2 in the other litigation that some or all of the material covered by the subpoena or order is subject to
3 this agreement, and such notification shall include a copy of this agreement; and
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5 (c) Cooperate with respect to all reasonable procedures sought to be pursued by
6 the designating Party whose confidential material may be affected.

7 **VIII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

8 8.1 If a receiving Party learns that, by inadvertence or otherwise, it has disclosed
9 confidential material to any person or in any circumstance not authorized under this agreement, the
10 receiving Party must immediately (a) notify in writing the designating Party of the unauthorized
11 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c)
12 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
13 agreement, and (d) request that such person or persons execute the “Acknowledgment and
14 Agreement to Be Bound” (Exhibit A).
15

16 **IX. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
17 **PROTECTED MATERIAL**

18 9.1 The inadvertent or unintentional disclosure of confidential information shall not be
19 deemed a waiver in whole or in part of Plaintiff’s or State Farm’s claim of protection pursuant to
20 this Protective Order. Any such inadvertently or unintentionally disclosed information shall be
21 designated as confidential as soon as reasonably practicable after a receiving Party becomes aware
22 of the erroneous disclosure and shall thereafter be treated as such by all receiving persons under the
23 terms of this Protective Order. Upon receipt of the properly designated documents, the receiving
24 Party must return or destroy the non-designated set within three (3) days of being informed of the
25 inadvertent disclosure. If the receiving Party destroys the documents, then the receiving Party must
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1 provide written certification of the destruction to the designating party within three (3) days of
2 receipt of the properly designated documents. In addition, the production or disclosure by either
3 Party of an attorney-client privileged, attorney work-product, or other protected document or
4 information, whether inadvertent or otherwise, shall not be deemed a waiver of the privilege, work
5 product, or other protection or immunity from discovery by the Party in this or any subsequent state
6 or federal proceeding pursuant to Federal Rule of Evidence 502 regardless of the circumstances of
7 disclosure. If any Party becomes aware of the production or disclosure of such protected information,
8 that Party shall provide written notice, to the designating Party, of such production or disclosure
9 within three (3) days after it becomes aware that protected information has been disclosed or
10 produced.
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13 **X. NON-TERMINATION AND RETURN OF DOCUMENTS**

14 10.1 Within sixty (60) days of the final determination of this action, including all appeals,
15 State Farm must provide the receiving Party with a list of documents that have been designated as
16 confidential by State Farm in this litigation and produced to the receiving Party, and which State
17 Farm wants destroyed. Within 14 days after the receipt of this list, the receiving Party must shred (if
18 paper) or delete (if electronic) all confidential materials themselves, as well as all copies, extracts,
19 notes, reports, memoranda, summaries thereof, or other documents containing such confidential
20 information. Alternatively, the Parties may agree upon appropriate methods of destruction.
21 Additionally, a receiving Party that discloses State Farm's confidentially designated material to
22 experts and consultants shall provide written confirmation that the receiving experts and consultants
23 have returned and/or destroyed all confidential material received (without limitation to the foregoing
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1 list of documents) as well as all notes, memoranda, and other materials derived from or in any way
2 revealing information relating to the confidential material.
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4 10.2 Notwithstanding this provision, counsel may retain one archival copy of all
5 documents filed with the court, subject to all requirements of this Protective Order, for a period of
6 seven (7) years after the termination of this action, including all appeals. Counsel's one archival
7 copy is for the sole and exclusive purpose of complying with any Rule of Professional Conduct and
8 ethical obligations owed to their respective clients. After such period, all materials that contain
9 confidential information must be shredded (if paper) or deleted (if electronic).
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11 10.3 The confidentiality obligations imposed by this agreement shall remain in effect until
12 the designating Party agrees otherwise in writing or the court orders otherwise.
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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD

**SINARS SLOWIKOWSKI TOMASKA
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Attorneys for Defendant State Farm Fire
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Dated this 1st day of March, 2024.

**DUNLAP BENNETT & LUDWIG LAW
FIRM**

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(425) 209-0022

Attorney for Plaintiff

Dated this 1st day of March, 2024.

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 IT IS FURTHER ORDERED that the production of any documents in this proceeding
3 shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute
4 a waiver by the producing Party of any privilege applicable to those documents, including the
5 attorney-client privilege, attorney work-product protection, or any other privilege or protection
6 recognized by law. *See* Fed. R. Evid. 502(d) This Order shall be interpreted to provide the
7 maximum protection allowed by Federal Rule of Evidence 502(d). The provisions of Federal
8 Rule of Evidence 502(b) do not apply. Nothing contained herein is intended to or shall serve
9 to limit a party's right to conduct a review of documents, ESI or information (including
10 metadata) for relevance, responsiveness and/or segregation of privileged and/or protected
11 information before production. Information produced in discovery that is protected as
12 privileged or work product shall be immediately returned to the producing Party.

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14 DATED: March 1, 2024

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18 _____
Kymberly K. Evanson
United States District Judge
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EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
 _____ [print or type full address], declare under
 penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order
 that was issued by the United States District Court for the Western District of Washington on
 this _____ day of _____, 202__, _____ in the case of *Debra S. O'Neal v.*
State Farm Fire & Casualty Company, no. 2:23-cv-00232-KKE. I agree to comply with and
 to be bound by all the terms of this Stipulated Protective Order and I understand and
 acknowledge that failure to so comply could expose me to sanctions and punishment in the
 nature of contempt. I solemnly promise that I will not disclose in any manner any information
 or item that is subject to this Stipulated Protective Order to any person or entity except in strict
 compliance with the provisions of this Order.

Within sixty (60) days of the final determination of this action, I shall provide written
 confirmation to counsel of record for Plaintiff that documents produced by State Farm (or
 disclosing the contents of documents) designated by State Farm as "Confidential"
 ("Confidential Information") has been shredded (if paper) or deleted (if electronic), including
 the shredding and deletion of all copies, extracts and summaries thereof.

I further agree to submit to the jurisdiction of the United States District Court for the
 Western District of Washington for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____